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OPTUMINSIGHT, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CAVE CONSULTING GROUP, INC.,

Plaintiff/Counterclaim  
Defendant,

vs.

OPTUMINSIGHT, INC.,

Defendant/Counterclaim  
Plaintiff.

CASE NO. 5:11-CV-0469-EJD

**STIPULATION AND ~~PROPOSED~~  
ORDER OF DISMISSAL OF CERTAIN  
COUNTS RELATING TO THE DANG  
PATENTS**

STIPULATION AND ~~PROPOSED~~ ]  
**ORDER OF DISMISSAL**  
CASE NO. 5:11-CV-0469-EJD

Plaintiff and Counterclaim Defendant Cave Consulting Group, LLC (“CCGroup”) and Defendant and Counterclaim Plaintiff OptumInsight, Inc. (“OptumInsight”), by their undersigned attorneys, state that to avoid the expense and uncertainty of ongoing litigation, the parties have agreed to resolve the claims and counterclaims related to U.S. Patent Nos. 5,835,897; 6,370,511; 7,620,560; 7,774,216; 7,725,333; and 7,979,290 (“Dang patent family”) owned by OptumInsight. Specifically, OptumInsight has agreed to provide a release and a covenant not to sue concerning its claims that CCGroup infringes the Dang patent family, and to dismiss those claims with prejudice, while CCGroup has agreed to dismiss without prejudice its claims alleging noninfringement, invalidity, and unenforceability of the Dang patent family. Therefore, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure, the parties hereby stipulate and agree as follows:

- 1) CCGroup hereby dismisses the claims set forth in Counts IV, V, VI, VII, VIII, IX, and X of the Second Amended Complaint filed on May 24, 2013 (Dkt. No. 89), of the above-captioned action WITHOUT PREJUDICE. Counts IV through IX seek a declaratory judgment of non-infringement and invalidity of U.S. Patent Nos. 5,835,897; 6,370,511; 7,620,560; 7,774,216; 7,725,333; and 7,979,290 (“Dang patent family”) owned by OptumInsight. Count X seeks a declaratory judgment for inequitable conduct and unenforceability of the patents in the Dang patent family.
- 2) OptumInsight, Inc. hereby dismisses the claims set forth in Counts III, IV, V, VI, VII, and VIII of its Answer to the Second Amended Complaint and Counterclaim filed on June 24, 2013 (Dkt. No. 96) in the above-captioned action WITH PREJUDICE. Counts III through VIII assert that CCGroup is infringing the patents in the Dang patent family.

1 3) OptumInsight hereby acknowledges that CCGroup prevailed as to Counts III, IV,  
2 V, VI, VII, and VIII of OptumInsight's Answer to the Second Amended Complaint  
3 and Counterclaims.

4 4) The parties acknowledge that each retains the right to argue that it is the "prevailing  
5 party" under 35 U.S.C. § 285 as to the case as a whole at the end of this litigation.

6 CCGroup and OptumInsight state that this dismissal does not affect the claims for  
7 relief set forth in Counts I-III of CCGroup's Second Amended Complaint and Counts I-II of  
8 OptumInsight's Answer to Second Amended Complaint and Counterclaim, or the defenses to  
9 those claims. Each party will bear its own costs with respect to the claims dismissed by this  
10 stipulation. CCGroup and OptumInsight also agree and stipulate that this dismissal shall not  
11 affect the rights or defenses of either party concerning any motion made for recovery of  
12 attorneys' fees under 35 U.S.C. § 285 in this matter, including any motion based in whole or  
13 in part on the dismissed claims.  
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STIPULATION AND ~~PROPOSED~~ [PROPOSED]

**ORDER OF DISMISSAL**

CASE NO. 5:11-CV-0469-EJD

1 DATED: April 24, 2014

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23 Attorneys for Plaintiff/Counterclaim Defendant  
24 CAVE CONSULTING GROUP, INC.  
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STIPULATION AND [ **PROPOSED** ]

**ORDER OF DISMISSAL**

CASE NO. 5:11-CV-0469-EJD

1 DATED: April 24, 2014

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17 Attorneys for Defendant/Counterclaim Plaintiff  
OPTUMINSIGHT, INC.

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19 **ATTESTATION OF ELECTRONIC SIGNATURES**

20 Pursuant to Local Rule of Practice in Civil Proceedings 5-1(i)(3), the undersigned filer of this  
21 document attests that concurrence in the filing of this document has been obtained from each of the  
22 signatories.  
23

24 DATED: April 24, 2014

DORSEY & WHITNEY LLP

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27 By: s/ David A. Couillard

David A. Couillard

28 STIPULATION AND **PROPOSED**

**ORDER OF DISMISSAL**

CASE NO. 5:11-CV-0469-EJD

**PROPOSED ORDER**

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: 4/28/2014



HONORABLE EDWARD J. DAVILA  
UNITED STATES DISTRICT JUDGE